

11/30/2007 9:32 AM FR. PAGE 7/11 RCVD AT 12/12/2007 4:49:54 PM [Central Standard Time] SVR:CHI RE/4 DNIS:1 CSID: DURATION (mm:ss):04-03

2120 - Served 2121 - Served  
 2220 - Not Served 2221 - Not Served  
 2320 - Served By Mail 2321 - Served By Mail  
 2420 - Served By Publication 2421 - Served By Publication  
 SUMMONS ALIAS - SUMMONS CCG N001-10M-1-07-05

**07 C 7279**

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
 COUNTY DEPARTMENT, CHANCERY DIVISION

(Name all parties)

Ira Holtzman, individually and as the representative of a  
 class of similarly-situated persons,

v.

Michael P. Caplice d/b/a M. P. Caplice & Associates.

No. \_\_\_\_\_

SERVE:  
 Michael P. Caplice  
 15 Spinning Wheel Rd., Suite 320  
 Hinsdale, IL 60521

**JUDGE MANNING  
MAGISTRATE JUDGE COLE****SUMMONS**

To each Defendant:

YOU ARE SUMMONED and required to file an answer to the complaint in this case, a copy of which is hereto attached, or otherwise file your appearance, and pay the required fee, in the Office of the Clerk of this Court at the following location:

- ☒ Richard J. Daley Center, 50 W. Washington, Room 802, Chicago, Illinois 60602
- |  |   |   |
|--|---|---|
| <input type="checkbox"/> District 1 - Skokie<br>5600 Old Orchard Rd.<br>Skokie, IL 60077       | <input type="checkbox"/> District 3 - Rolling Meadows<br>2121 Euclid<br>Rolling Meadows, IL 60008 | <input type="checkbox"/> District 4 - Maywood<br>1500 Maybrook Ave.<br>Maywood, IL 60153          |
| <input type="checkbox"/> District 5 - Bridgeview<br>10220 S. 76th Ave.<br>Bridgeview, IL 60455 | <input type="checkbox"/> District 6 - Markham<br>16501 S. Kedzie Pkwy.<br>Markham, IL 60426       | <input type="checkbox"/> Child Support<br>28 North Clark St., Room 200<br>Chicago, Illinois 60602 |

You must file within 30 days after service of this Summons, not counting the day of service.  
 IF YOU FAIL TO DO SO, A JUDGMENT BY DEFAULT MAY BE ENTERED AGAINST YOU FOR THE RELIEF REQUESTED IN THE COMPLAINT.

To the officer:

This Summons must be returned by the officer or other person to whom it was given for service, with endorsement of service and fees, if any, immediately after service. If service cannot be made, this Summons shall be returned so endorsed. This Summons may not be served later than 30 days after its date.

Atty. No.: 51306

Name: Brian J. Wanca @ANDERSON + WANCA

Atty. for: Plaintiff

Address: 3701 Algonquin Rd., Suite 760

City/State/Zip: Rolling Meadows, IL 60008

Telephone: (847) 368-1500

Service by Facsimile Transmission will be accepted at: \_\_\_\_\_

WITNESS: \_\_\_\_\_

**DOROTHY BROWN NOV 16 2007**

Clerk of Court

Date of service: \_\_\_\_\_

(To be inserted by officer on copy left with defendant or other person)

(Area Code) (Facsimile Telephone Number)

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

**EXHIBIT****A**

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION

IRA HOLTZMAN, individually and as the  
representative of a class of similarly-situated  
persons.

Plaintiff,

MICHAEL P. CAPLICE d/b/a M. P.  
CAPLICE & ASSOCIATES,

Defendant.

PLAINTIFF'S MOTION FOR CLASS CERTIFICATION

Plaintiff, IRA HOLTZMAN, by his attorneys, Anderson + Wanea and Djab & Bock, LLC, respectfully moves this court, pursuant to 735 ILCS 5/2-801 et seq., to certify for class action treatment the following classes, as described in Plaintiff's Class Action Complaint:

All persons who (1) on or after four years prior to the filing of this action, (2) were sent telephone facsimile messages of material advertising the commercial availability of any property, goods, or services by or on behalf of Defendant, (3) with respect to whom Defendant did not have prior express permission or invitation for the sending of such faxes, and (4) with whom Defendant did not have an established business relationship.

All persons who (1) on or after five years prior to the filing of this action, (2) were sent telephone facsimile messages of material advertising the commercial availability of any property, goods, or services by or on behalf of Defendant (3) with respect to whom Defendant did not have prior express permission or invitation for the sending of such faxes, and (4) with whom Defendant did not have an established business relationship.

All persons who (1) on or after three years prior to the filing of this action, (2) were sent telephone facsimile messages of material advertising the commercial availability of any property, goods, or services by or on behalf of Defendant, (3) with respect to whom Defendant did not have prior express permission or invitation for



**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION**

IRA HOLTZMAN, individually and as the  
representative of a class of similarly-situated  
persons,

Plaintiff,

v.

MICHAEL P. CAPLICE d/b/a M. P.  
CAPLICE & ASSOCIATES,

Defendant.

1004 W. FORT ST.  
CHICAGO, ILL. 60607  
Tel: 312.467.0000  
Class Action

**CLASS ACTION COMPLAINT**

Plaintiff, IRA HOLTZMAN ("Plaintiff"), brings this action on behalf of himself and all other persons similarly situated, through his attorneys, and except as to those allegations pertaining to Plaintiff or his attorneys, which allegations are based upon personal knowledge, alleges the following upon information and belief against Defendant, MICHAEL P. CAPLICE d/b/a M. P. CAPLICE & ASSOCIATES ("Defendant"):

**PRELIMINARY STATEMENT**

1. This case challenges Defendant's practice of faxing unsolicited advertisements.
2. The Federal Telephone Consumer Protection Act, 47 USC § 227, prohibits a person or entity from faxing or having an agent fax advertisements without the recipient's prior express invitation or permission ("junk faxes" or "unsolicited faxes"). The TCPA provides a private right of action and provides statutory damages of \$500 per violation.
3. Unsolicited faxes damage their recipients. A junk fax recipient loses the use of its fax machine, paper, and ink toner. An unsolicited fax wastes the recipient's valuable time that would have been spent on something else. A junk fax interrupts the recipient's privacy. Unsolicited faxes prevent fax machines from receiving authorized faxes, prevent their use for

11/30/2007 9:32 AM FROM: [REDACTED] TO: [REDACTED] SUBJECT: [REDACTED] PAGE 9/11 \* RCVD AT 12/12/2007 4:49:54 PM [Central Standard Time] \* SVR:CHL RF/4 \* DNS:1 \* CSID: \* DURATION (mm:ss):04:03

authorized outgoing faxes, cause undue wear and tear on the recipients' fax machines, and require additional labor to attempt to discern the source and purpose of the unsolicited message.

4. On behalf of himself and all others similarly situated, Plaintiff brings this case as a class action asserting claims against Defendant under the TCPA, the common law of conversion, and the consumer protection statutes forbidding and compensating unfair business practices.

5. Plaintiff seeks an award of statutory damages for each violation of the TCPA.

#### JURISDICTION AND VENUE

6. Jurisdiction is conferred by 735 ILCS 5/2-209 in that Defendant has transacted business and committed tortious acts related to the matters complained of herein.

7. Venue is proper in Cook County pursuant to 735 ILCS 5/2-101, et seq. because some of the tortious acts complained of occurred in Cook County, Illinois.

8. Federal jurisdiction does not exist because no federal question or claim is asserted and Plaintiff's individual claim are worth less than \$75,000.00, inclusive of all forms of damages and fees. Plaintiff expressly disclaims any individual recovery in excess of \$75,000.00, inclusive of all forms of damages and fees.

#### PARTIES

9. Plaintiff, IRA HOLTZMAN, is resident of Cook County, Illinois.

10. On information and belief, Defendant, MICHAEL P. CAPLICE, is an Illinois resident.

#### FACTS

11. On or about November 13, 2007, Defendant faxed an advertisement to Plaintiff.

A copy of the facsimile is attached hereto as Exhibit A.

13. On information and belief, Defendant faxed the same and similar advertisements to Plaintiff and more than 39 other recipients without first receiving the recipients' express permission or invitation.

COUNT 1  
TELEPHONE CONSUMER PROTECTION ACT, 47 U.S.C. § 227

16. In accordance with 735 ILCS 5/2-801, Plaintiff brings Count I pursuant to the Telephone Consumer Protection Act, 47 U.S.C. § 227, on behalf of the following class of persons:

17. A class action is warranted because:

(b) There are questions of fact or law common to the class predominating over questions affecting only individual class members, including without limitation:

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(ii) Whether Defendant's facsimiles advertised the commercial availability of property, goods, or services;

(iii) The manner and method Defendant used to compile or obtain the list of fax numbers to which it sent Exhibit A and other unsolicited faxed advertisements;

(iv) Whether Defendant faxed advertisements without first obtaining the recipients' express permission or invitation;

(v) Whether Defendant violated the provisions of 47 USC § 227;

(vi) Whether Plaintiff and the other class members are entitled to statutory damages;

(vii) Whether Defendant should be enjoined from faxing advertisements in the future; and

(viii) Whether the Court should award trebled damages.

18. Plaintiff will fairly and adequately protect the interests of the other class members. Plaintiff's counsel are experienced in handling class actions and claims involving unsolicited advertising faxes. Neither Plaintiff nor Plaintiff's counsel has any interests adverse or in conflict with the absent class members.

19. A class action is an appropriate method for adjudicating this controversy fairly and efficiently. The interest of each individual class member in controlling the prosecution of separate claims is small and individual actions are not economically feasible.

20. The TCPA prohibits the "use of any telephone facsimile machine, computer or other device to send an unsolicited advertisement to a telephone facsimile machine...." 47 U.S.C. § 227(b)(1).

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21. The TCPA defines "unsolicited advertisement," as "any material advertising the commercial availability or quality of any property, goods, or services which is transmitted to any person without that person's express invitation or permission." 47 U.S.C. § 227(a)(4).

22. The TCPA provides:

3. Private right of action. A person may, if otherwise permitted by the laws or rules of court of a state, bring in an appropriate court of that state:

(A) An action based on a violation of this subsection or the regulations prescribed under this subsection to enjoin such violation,

(B) An action to recover for actual monetary loss from such a violation, or to receive \$500 in damages for each such violation, whichever is greater, or

(C) Both such actions.

23. The Court, in its discretion, can treble the statutory damages if the violation was knowing. 47 U.S.C. § 227.

24. Defendant violated the 47 U.S.C. § 227 et seq. by sending advertising faxes (such as Exhibit A) to Plaintiff and the other members of the class without first obtaining their prior express invitation or permission.

25. The TCPA is a strict liability statute and Defendant is liable to Plaintiff and the other class members even if its actions were only negligent.

26. Defendant knew or should have known that Plaintiff and the other class members had not given express invitation or permission for Defendant or anybody else to fax advertisements about Defendant's goods or services.

27. Defendant's actions caused damages to Plaintiff and the other class members. Receiving Defendant's junk faxes caused the recipients to lose paper and toner consumed in the



printing of Defendant's faxes. Moreover, Defendant's faxes used Plaintiff's fax machine. Defendant's faxes cost Plaintiff time, as Plaintiff and his employees wasted their time receiving, reviewing and routing Defendant's illegal faxes. That time otherwise would have been spent on Plaintiff's business activities. Finally, Defendant's faxes unlawfully interrupted Plaintiff's and the other class members' privacy interests in being left alone.

28. Even if Defendant did not intend to cause damage to Plaintiff and the other class members, did not intend to violate their privacy, and did not intend to waste the recipients' valuable time with Defendant's advertisements, those facts are irrelevant because the TCPA is a strict liability statute.

WHEREFORE, Plaintiff, IRA HOLTZMAN, individually and on behalf of all others similarly situated, demands judgment in his favor and against Defendant, MICHAEL P. CAPLICE d/b/a M. P. CAPLICE & ASSOCIATES, as follows:

- A. That the Court adjudge and decree that the present case may be properly maintained as a class action, appoint Plaintiff as the representative of the class, and appoint Plaintiff's counsel as counsel for the class;
- B. That the Court award \$500.00 in damages for each violation of the TCPA;
- C. That the Court enter an injunction prohibiting Defendant from engaging in the statutory violations at issue in this action; and
- D. That the Court award costs and such further relief as the Court may deem just and proper, but in any event, not more than \$75,000.00 per individual, inclusive of all damages and fees.

#### COUNT II CONVERSION

29. Plaintiff incorporates the preceding paragraphs as though fully set forth herein.

30. In accordance with 735 ILCS 5/2-801, Plaintiff brings Count II for conversion under the common law for the following class of persons:

All persons (1) who on or after a date five years prior to the filing of this action, (2) were sent telephone facsimile messages of material advertising the commercial availability of any property, goods or services by or on behalf of Defendant, (3) with respect to whom Defendant did not have prior express permission or invitation for the sending of such faxes, and (4) with whom Defendant did not have an established business relationship.

31. A class action is proper in that:

- (a) On information and belief the class consists of forty or more persons and is so numerous that joinder of all members is impracticable.
- (b) There are questions of fact or law common to the class predominating over all questions affecting only individual class members, including:
  - (i) Whether Defendant engaged in a pattern of sending unsolicited fax advertisements;
  - (ii) The manner and method Defendant used to compile or obtain the list of fax numbers to which it sent Exhibit A and other unsolicited faxed advertisements; and
  - (iii) Whether Defendant committed the tort of conversion.

32. Plaintiff will fairly and adequately protect the interests of the other class members. Plaintiff has retained counsel who is experienced in handling class actions and claims involving unlawful business practices. Neither Plaintiff nor Plaintiff's counsel have any interests adverse or in conflict with the class.



40. Defendant's actions caused damages to Plaintiff and the other members of the class because their receipt of Defendant's unsolicited fax advertisements caused them to lose paper and toner as a result. Defendant's actions prevented Plaintiff's fax machines from being used for Plaintiff's business purposes during the time Defendant was using Plaintiff's fax machines for Defendant's illegal purpose. Defendant's actions also cost Plaintiff employee time, as Plaintiff's employees used their time receiving, routing, and reviewing Defendant's illegal faxes, and that time otherwise would have been spent on Plaintiff's business activities.

WHEREFORE, Plaintiff, IRA HOLTZMAN, individually and on behalf of all others similarly situated, demands judgment in his favor and against Defendant, MICHAEL P. CAPLICE d/b/a M. P. CAPLICE & ASSOCIATES, as follows:

- A. That the Court adjudge and decree that the present case may be properly maintained as a class action, appoint Plaintiff as the representative of the class, and appoint Plaintiff counsel as counsel for the class;
- B. That the Court award appropriate damages;
- C. That the Court award costs of suit; and
- D. Awarding such further relief as the Court may deem just and proper, but in any event, not more than \$75,000.00 to any individual class member.

**COUNT III**  
**ILLINOIS CONSUMER FRAUD AND DECEPTIVE BUSINESS PRACTICES ACT**  
**815 ILCS 505/2**

- 41. Plaintiff incorporates the preceding paragraphs as though fully set forth herein.
- 42. In accordance with 735 ILCS 5/2-801, Plaintiff, on behalf of the following class of persons, bring Count III for Defendant's unfair practice of sending unsolicited and unlawful fax advertisements:

All persons in Illinois who (1) on or after a date three years prior to the filing of this action, (2) were sent telephone facsimile messages of material advertising the commercial availability of any property, goods, or services by or on behalf of Defendant, (3) with respect to whom Defendant did not have prior express permission or invitation for the sending of such faxes, and (4) with whom Defendant did not have an established business relationship.

43. A class action is proper in that:

(a) On information and belief the class consists of thousands of persons in Illinois and throughout the United States and is so numerous that joinder of all members is impracticable.

(b) There are questions of fact or law common to the class predominating over all questions affecting only individual class members including:

(i) Whether Defendant engaged in a pattern of sending unsolicited fax advertisements;

(ii) The manner and method Defendant used to compile or obtain the list of fax numbers to which it sent Exhibit A and other unsolicited faxed advertisements;

(iii) Whether Defendant's practice of sending unsolicited faxed advertisements violates Illinois public policy;

(iv) Whether Defendant's practice of sending unsolicited faxes is an unfair practice under the Consumer Fraud Act; and

(v) Whether Defendant should be enjoined from sending unsolicited fax advertising in the future.

44. Plaintiff will fairly and adequately protect the interests of the other class members. Plaintiff has retained counsel who are experienced in handling class actions and



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**EXHIBIT A**



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11/13/2007 10:23 AM FROM: 630-920-0163 M.P. CAPLICE & ASSOCIATES TO: +1 (847) 4984873 PAGES: 001 OF 003

**M.P. CAPLICE & ASSOCIATES**

15 Spinning Wheel Road  
Suite 320  
Hinsdale, IL 60521

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**confidential**  
**fax**

**To:** Ira Holtzman  
**Fax Number:** +1 (847) 4984873

**From:** Tracy Gardner  
**Fax Number:** 630-920-0163  
**Business Phone:** 800-860-4534  
**Home Phone:**

**Pages:** 3  
**Date/Time:** 11/13/2007 10:23 43 AM  
**Subject:** Professional Liability Insurance

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## *M.P. Caplice & Associates*

November 13, 2007

Mr. Ira Holtzman  
Ira Holtzman CPA & Associates Ltd.  
1307 Shermer Road  
Northbrook, IL 60062

Dear Ira:

I am writing to you in regards to your firm's professional liability insurance. M.P. Caplice & Associates specializes in providing Accounting firms with professional liability protection. For more than fifteen years I have worked with and provided coverage for hundreds of Accounting firms similar in size to your firm. Specialization in the area of professional liability insurance provides M.P. Caplice & Associates with a greater understanding of both the practice of accountants as well as the marketplace for accountants' professional liability insurance.

As a leading producer in the accountants' professional liability insurance industry M.P. Caplice & Associates has a distinct advantage over other brokers when negotiating policy wording and policy premiums. Rest assured that M.P. Caplice & Associates utilizes only those insurance carriers that have received at least a rating of A (Excellent) from A.M. Best Company. This rating represents not only the insurance company's financial strength, but also the insurance carrier's ability to meet its obligations to policyholders. Due to the rapidly changing professional liability marketplace, it is also imperative to purchase a professional liability policy from an insurance carrier which has expertise in handling suits against accounting firms. The carriers that M.P. Caplice & Associates represent provide your firm with this expertise.

In order to provide your firm with a competitive premium quotation as quickly and efficiently as possible, simply forward a copy of your incumbent carrier's renewal application or complete the attached quick quote questionnaire. Please fax or e-mail your information to my attention. My fax number is 630-920-0163 and my e-mail address is [mike@mpecaplice.com](mailto:mike@mpecaplice.com).

If you have any questions or concerns, please do not hesitate to contact my office toll free at 1-800-860-4534.

Respectfully Yours,

Michael P. Caplice  
President